Exhibit A

COMBINED COMPANIES, INC.
and
WINBACK & CONSERVE PROGRAM, INC.
ONE STOP FINANCIAL, INC.,
GROUP DISCOUNTS, INC.
800 DISCOUNTS, INC.,

Petitioners,

and

AT&T CORP.

Respondent.

COMMENTS OF AT&T CORP. IN OPPOSITION TO
JOINT PETITION FOR DECLARATORY RULING AND
JOINT MOTION FOR EXPEDITED CONSIDERATION

Pursuant to the Commission's Public Notice released July 26, 1996 and Section 1.415 of the Commission's Rules, 47 C.F. §1.415, Respondent AT&T Corp. ("AT&T") hereby submits its Comments in Opposition to (1) the Joint Petition for Declaratory Ruling on the Assignment of Accounts (Traffic) Without the Associated CSTP II Plans Under AT&T Tariff F.C.C. No. 2 ("Joint Petition"); and (2) the Joint Motion for Expedited Consideration of the Joint Petition for Declaratory Ruling ("Joint Motion"), filed by Combined Companies, Inc., ("CCI") and four other companies owned by Alfonse G. Inga, ("Inga"), Winback & Conserve Program, Inc., One Stop Financial, Inc., Group Discounts, Inc. and 800 Discounts, Inc. (the five companies are collectively referred to herein as the "Petitioners").

AT&T opposes the Joint Petition for Declaratory Ruling because the material facts relevant to the requested rulings are disputed. A formal complaint

Exhibit B

STATEMENT OF FACTS

A. Petitioners' Customer Specific Term Plan II Agreements

First Winback & Conserve Program, Inc., One Stop Financial, Inc., Group Discounts, Inc. and 800 Discounts, Inc., all controlled by Alfonse G. Inga, entered into Customer Specific Term Plan II ("CTSP II") arrangements with AT&T for Wide Area Telephone Service ("WATS" or inbound "800" long distance service), all prior to June 17, 1994. Petitioners discontinued their pre-June 17, 1994 term plans without liability and concurrently subscribed to new term plans after June 17, 1994. It is these new term plans that are at issue in this proceeding.

B. The Transfer Requests

1. First Transfer Request (Four Inga companies to CCI)

The first transfer request, not at issue here, was made by the four Inga companies identified above on or about December 16, 1994. These four companies requested that AT&T permit the transfer of their nine CTSP II agreements to CCI, a new company with no assets. As to this transfer AT&T, consistent with its filed tariffs, initially demanded a security deposit from CCI, a company with no credit history which had just recently been formed. As shown below, this transfer was eventually effected without a deposit.

2. Second Transfer Request (CCI to PSE)

On or about January 13, 1995 CCI made a transfer request to AT&T -- ostensibly under Section 2.1.8 of AT&T's Tariff F.C.C. No. 2 -- that it be allowed to transfer all of the traffic (i.e., all locations subscribed under the CSTP II plans at issue).

Exhibit C

but not the plans themselves[2] to Public Service Enterprises of Pennsylvania, Inc. ("PSE"). AT&T objected on the grounds that Section 2.1.8 did not authorize the transfer of a plan unless the transferee, in this case PSE, assumes the original customer's liability and that the location-only transfer violated the "fraudulent use" provisions of Section 2.2.4 of its tariff[3] because the transfer had both the purpose and the effect of avoiding the payment, in whole or in part, of tariffed shortfall and termination charges. The proposed transfer would have transferred the entire revenue stream to PSE without the corresponding obligations to pay any shortfall and termination charges under the CSTP II Plans. In this regard, Mr. Inga had previously specifically informed AT&T that he intended to leave AT&T with a substantial financial loss and no recourse, by isolating his liabilities in companies with no assets and then having these companies file for protection under the bankruptcy laws.

C. Procedural History

On February 25, 1995, Petitioners filed suit in the United States District Court for the District of New Jersey under, inter alia, Section 406 of the Communications Act (47 U.S.C. § 406) seeking preliminary injunctive relief. Petitioners characterized the following acts as denials of service in violation of the Act: (1) AT&T's

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2 This process has been identified by the misnomer "fractionalization" in the Joint Petition.

3 And Section 2.8.2 which permits AT&T to "take immediate action to temporarily suspend service" where a customer attempts to "circumvent [AT&T's] ability to charge for its services as specified in Section 2.2.4 (Fraudulent Use)."

Exhibit D

to describe the proposed transfer of a plan without its liabilities and then asked whether AT&T's tariff prohibits "fractionalization."

The District Court asked and answered the wrong questions. First, the threshold question is whether a transfer of all a plan's traffic without its liabilities is permitted by the Tariff's Transfer Provision (Section 2.1.8), and, as AT&T's opening brief explains, the answer is that the tariff allows transfers only if the "new customer" (PSE) assumes "all" of the old customer's (here, CCI's) obligations, which obviously include shortfall and termination commitments when all the plan's traffic is transferred. See AT&T Br. at 26-27.

The Inga Brief offers no response to this point. The CCI Brief, by contrast, has offered arguments that were not accepted by the District Court, but that confirm the District Court's error. CCI notes that a transfer of service can apply either to individual end user locations or to entire plans. See CCI Br. at 31-32 & n.13. CCI then, incongruously, seeks to defend the District Court by citing "record evidence" that addressed transfers of individual end user locations (not entire plan's liabilities), and showed that the only "obligation" transferred to the "new customer" in that event is the unpaid liability associated with the individual end user location that is transferred.

But that is self-evident under the tariff. By contrast, when all the plan's traffic and locations are being transferred to a new customer and when the "plan" would then exist only as an empty shell, then the "new customer" would not be assuming "all" the associated "obligations" unless it assumed the "existing customer's" shortfall and termination commitments.

Exhibit E

Otherwise, all the plan's traffic is separated from liability, and AT&T loses control over traffic that effectively requires the liabilities under the plan.

Further, AT&T also demonstrated that even if Section 2.1.8.B could somehow be read to permit transfers of a plan's traffic without all associated obligations, the proposed transfers would both violate the antifraud provisions of the tariff (because they would evade shortfall or termination liabilities) and violate Section 202(a) of the Communications Act. See AT&T Br. at 28-29. The District Court ignored these provisions, and neither plaintiff defends this failure -- other than to make the other claims (discussed below) that the District Court did not accept.

2. Plaintiffs' New Claim That There Is No Shortfall Liability To Evade Is Irrelevant And Erroneous.

Plaintiffs are thus reduced to arguing that the transfers could not evade "shortfall" charges because, they assert, there is no possibility of such charges. These claims all depend on plaintiffs' assertions that the term plans in question are "pre-June 17, 1994 plans" and that pro rata shortfall charges cannot be applied to the discontinuance of service under these plans. See Inga Br. at 22-28; CCI Br. at 37.

The short answer to these claims is that they were not relied upon by the District Court below in issuing the injunction. To the contrary, it rested its injunction on the ground that enforcing the tariffed shortfall commitments is not a "real" concern and that AT&T has no interest in doing so, not on the ground that there were no such commitments. March 5, 1996 Order at 19 (AA 1391).

Exhibit F

A. The Commission Cannot Grant Declaratory Relief Where There Is A Material Issue Of Fact In Dispute

Declaratory relief under Section 1.2 of the Commission's Rules, 47 C.F.R. § 1.2, cannot be granted by the Commission "where, as in the present case, all relevant facts are not clearly developed and essentially undisputed." In the Matter of Cascade Utilities, 8 FCC Rcd 781, 782 (1993) citing to Aeronautical Radio, Inc., 5 FCC Rcd 2516 (Com. Car. Bur. 1990) and American Network, Inc., 4 FCC Rcd 550, 551 (Com. Car. Bur. 1989). Instead, fact-based disputes must be resolved through a complaint proceeding where the parties "through discovery, would have an opportunity to develop the factual record to resolve this dispute" Aeronautical Radio, Inc., supra, 5 FCC Rcd at 2516.

B. A Material Issue of Fact Exists As To Whether AT&T Had Reasonable Grounds For Believing That The Purpose And Effect Of The Transfer Were To Defraud AT&T

CCI ostensibly sought to transfer the traffic -- but not the plans themselves -- to PSE under Section 2.1.8 of AT&T's Tariff F.C.C. No. 2. Section 2.1.8.B states that a customer may transfer its WATS service (in this case the relevant WATS services are the CSTP II Plans) to a "new Customer" only if the new customer confirms in writing that it "agrees to assume all obligations of the former Customer at the time of transfer or assignment." This provision, by its terms, allows a transfer of CCI's service to PSE only if PSE agreed to assume all obligations under